BAIL SLIP

The appellant/Accused namely Annadurai, was directed to be released on bail as per order of this Court dated 30.4.2003 and made in Crl.M.P.No. 3946/2003 in CA.No. 237/2003 on the file of the Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27-06-2007

THE HON'BLE MR. JUSTICE R.REGUPATHI

Crl.A.No.237 of 2003

Annadurai . . Appellant/Accused

Versus

State Rep by
The Inspector of Police,
Padalur Police Station. . . Respondent

This Criminal Appeal is filed to set aside the judgment dated 09.01.2003 made in S.C.No.6 of 2000 on the file of the learned Principal Sessions and District Judge, Perambalur District convicting the appellant for offence under Section 376 (1) and 325 IPC and sentenced him to undergo seven years and three rigorous imprisonment respectively.

For Appellant : Mr.G. Ravikumar
For Respondent : Mr.Hasan Mohd. Jinnah
Government Advocate (Crl.Side)

JUDGMENT

The appellant is the sole accused in this case and he was convicted for the offence under Sections 376 and 325 IPC and sentenced to undergo rigorous imprisonment for seven years and three years respectively. Aggrieved against the conviction and sentence the present appeal has been filed before this Court.

2.The case of the prosecution is that the victim, who is a woman, aged about 25 years is the neighbour in the agricultural land of the accused and the irrigation for the said land was done from the common well. On 17.03.1997 at about 12.30 Noon, when the victim woman PW1 was alone, the appellant, the sole accused in this case alleged to have forcibly pushed her down and removed her cloth and committed rape. After sometime, PW1 informed this to her husband PW3 who came to the scene of

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occurrence. It is further the case of the prosecution that a Panchayat was convened, in which the accused failed to appear resulting in the registration of the case after 18 days i.e. on 05.04.1997.

3. The learned trial Judge examined the victim woman as PW1, who states that the accused pushed her down in the agricultural land at 12.30 Noon and raped her. When her husband came to the scene of occurrence, she informed to him and subsequently a Panchayat was conducted. PW3, who is the husband of PW1, corroborated the evidence of PW1 to the extent that the occurrence was informed to him. PW4, who came to the scene of occurrence a little later was treated as hostile. PW5 is the panchayatdar who speaks about the allegation as well as the refusal of the accused for conciliation. PW2 is the medical officer who examined PW1 and on 07.04.1997 X-ray for the left middle finger was taken and it was found to be fractured. She was admitted in the hospital and treatment was given. PW6 is another medical officer who examined PW1 and she has given the opinion that PW1 was produced before her 22 days later of the alleged occurrence and the victim was found to be a married woman and She could not find any injuries over her private parts and she has further stated that there is no injury on her to substantiate the commission of rape. PW8, Inspector of Police, who registered the First Information Report taken up the initial investigation has also prepared observation mahazar attested by PW7. PW9 on completion of the investigation filed a final report for the offence punishable under Sections 376 and 325 IPC. On conclusion of the trial, when the accused was questioned, he pleaded innocence and the learned trial Judge on hearing both the counsel convicted and sentenced the appellant for the offence aforementioned.

4.The learned counsel for the appellant submits that the report was given to police after 18 days of occurrence. On perusal of the evidence of PW1, no such elaborate testimony of rape was given by her. PW3 who is the husband of PW1 also stated that PW1 initially informed that nothing had happened. Further subsequently, he stated that the accused has outraged his wife's modesty. It is further submitted by the learned counsel for the appellant that evidence of PW1 is not corroborated by the medical evidence of PW6. PW4 has been examined as occurrence witness and she has been treated as hostile. It is further contended that the fracture on the left middle finger of PW1 would have been sustained due to fall and since the accused happened to be neighbour in the agricultural land of the victim, the case has been foisted on him.

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5.Per contra, the learned Government Advocate (Criminal Side) submits that the evidence of prosecutrix, in an offence of rape, must be given primary importance and based on her testimony alone the conviction could be given. In the instant case, though there are no other witnesses to speak about the offence of rape, the victim's evidence can be taken into consideration to sustain the conviction granted by the trial Court.

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6.I carefully perused the materials available on record and heard the submissions made. On perusal of the evidence of PW1 in a grave offence like this, though it has been simply stated that the accused raped her, it has not been elaborated. At the time when her husband PW3 questioned her, she replied initially that nothing had happened. PW3 seen the accused going away from the scene of occurrence. PW4 in her chief examination stated that PW1 was beaten severely by her husband PW3 and she only advised PW3 not to assault her any more. However she has been treated hostile. The occurrence had taken place on 17.03.1997 and the report was given after a delay of 18 days. To corroborate the testimony of PW1, no other materials are available including the medical evidence. On perusal of the medical evidence, there is nothing to substantiate the commission of rape. On perusal of the observation mahazar, it has been stated that there is no material to substantiate the commission of such offence in that place. Under Such circumstances, I am of the considered view that the offence of rape is not substantiated and therefore the appellant is acquitted for the offence under Section 376 IPC. On perusal of the other materials on record, it appears that the accused is known to PW1. The presence of the accused in the scene of occurrence cannot be disputed and the accused is the neighbour in the agricultural land owned by PW1. On perusal of the materials, it appears that the accused indulged in quarrel with PW1 and made an attempt to outrage her modesty and at that time, PW1 sustained injury at the left middle finger. To substantiate such case, the evidence of PW2, the medical officer can be safely relied on. Further to substantiate such fracture, though X-ray has been taken it has not been marked during the trial. In this regard, the learned counsel for the appellant submits that the occurrence had taken place during 1997 and after the occurrence, PW3, the husband of PW1 separated from her and he is living with some other woman. Equally, PW1 also married some other person after the occurrence. The appellant has undergone the ordeal of trial and appeal for a period of 10 years, leniency may be shown on the appellant in so far as imposing sentence if the appellant is convicted, on the basis of the materials available on record. Therefore, I am of the considered view that the appellant can be convicted for the offence under Section 354 r/w 323 IPC. At this stage, the learned counsel for the appellant submits that the appellant has already undergone imprisonment for three months and 21 days. Therefore, the appellant/accused is sentenced for the period already undergone. With this observation, the appeal is ordered accordingly.

jikr

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

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To
1.The Principal Sessions and District Judge,
Perambalur.
2. The Superintendent Central Prison, Trichy.

3. The Public Prosecutor, High Court, Chennai
4. The Inspector of Police,
PADALUR Police Station, Perambalur District.

+ One cc to Mr. G. Ravikumar, Advocate SR 39164
MDR (co)
sg 30/7/07

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27.06.2007

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